EXHIBIT J

PART 2

it is not authoritative because it's merely testimonials of what people have done and what they've found have worked for them in their particular situation.

Q. So you don't deem the National Safety Council to be authoritative as well?

A. No.

Q. So I'm trying to find out, how is it that you make a determination that you're going to incorporate other people's opinions and writings into your report as a basis to make or formulate an opinion?

MR. ROBINSON: Objection to the form.

A. If material is out there in the public domain that has been published that is consistent with what I have learned over the past 30 plus years in industry, I feel it's accurate and it's representative of what is going on in the industry or what has taken place in the industry, I'll rely upon that because it is from what I determine a fair representation of what is really happening.

Q. Okay. So over your 29 plus years

with Cincinnati, Inc., you've evaluated approximately 30 to 35 claims by operators that they were injured at the point of operation because of inadvertent activation of the press brake, correct?

A. I've investigated those claims.

Q. Okay. And of those claims, only five turned out to be claims where there was inadvertent activation of the press brake; am I correct?

A. I didn't say specifically five. I said less than five.

Q. Okay.

A. A very small number.

Q. And the other cases were determined that there was not inadvertent activation of the press brake?

A. Correct.

Q. And of those less than five cases, half of those cases, because of the statistical probability of how many press brakes are out there, being 50 percent with gated foot controls and 50 percent being ungated foot controls, you testified half of those cases involved inadvertent

activation by the use of gated foot controls, correct?

MR. ROBINSON: Objection to the form, mischaracterizes prior testimony.

A. (Shaking head.)

Q. Let me break that down in pieces.

A. Yeah. I don't believe I said that, and I don't believe I testified in such a way that you can draw that conclusion, that half of the, half of the less than five were ungated or gated. I know I have direct recollection of one of them being a foot pedal, which is a manual device, so it doesn't even fall into this alleged foot switch family.

Q. I'm sorry. I'm not -- I did not make the distinction with foot pedal.

So of the five -- less than five cases where there was inadvertent activation of the machine by the foot control or foot pedal --

A. Okay.

Q. -- your testimony is approximately half of those would have involved gated foot controls?

MR. ROBINSON: Objection,

mischaracterizes testimony.

MR. HARTMAN: Well, I don't believe it does.

BY MR. HARTMAN:

A. Well, I'll give you a possibility, may have involved as many as two-and-a-half or two gated, but I cannot testify here that that is true, in fact the case.

MR. ROBINSON: And for the record, the mischaracterization occurs, I think -- and if I'm mistaken, it's my apologies, I thought the testimony was that half of the 35 or so instances or claims involving inadvertent activation claims were what the testimony was from this witness as to those that contained a gate. You have now moved that now to be half of the five, when that may be the case, but I don't think that was the prior testimony. That's the problem I have with the way you tried to flip that.

MR. HARTMAN: Well, I think I characterized it accurately, in that an overwhelming majority of the cases of the 30 to 35 cases turned out to be cases or claims not involving inadvertent activation of the foot

control. So how could it be involving the gate if there was no inadvertent activation of the foot control?

MR. ROBINSON: I think you've changed the testimony, Mr. Hartman, that's my problem with the way you've raised it.

MR. HARTMAN: Well, I'm here to find out what you know.

BY MR. HARTMAN:

Q. Tell me, on the cases that did not -- that you investigated that over that less than five number, am I correct that there was a determination made that there was not inadvertent operation of the machine, there was not inadvertent activation of the machine by use of the foot control?

A. I don't understand that question at all.

MR. ROBINSON: Yeah. Objection to the form.

Q. Well, am I correct, sir, that earlier you testified that there were claims of inadvertent activation of the foot control that you know of in approximately 30 to 35 claims?

A. Yes.

Q. And am I correct, sir, that you testified that of those 30 to 35 cases, after there was an examination and an investigation and evaluation of those claims, less than 5 turned out to be actual claims or situations involving inadvertent activation of the foot control?

A. Actual inadvertent activation, yes.

Q. The rest were something other than inadvertent activation of the foot pedal or foot control?

A. Yes.

Q. So we are talking about the same thing.

MR. ROBINSON: Objection to your comment.

Q. Now --

MR. ROBINSON: You may now have obtained some additional testimony, but to suggest that you didn't change the testimony, not saying intentionally, but for whatever reason, previously, I think is mistaken.

MR. HARTMAN: The record will speak for itself.

MR. ROBINSON: I know it will. I don't need you to tell me. Everything we say on the record speaks for itself. That's why the court reporter is here.

BY MR. HARTMAN:

Q. Sir, would you then say that of the less than five cases, to the best that you can estimate, approximately half of those cases -- Strike that.

Sir, of the less than five situations that involved actual inadvertent activation of the foot control, approximately half of those involved gated foot controls?

A. No, I can't say that.

Q. Would it be correct that you don't know how many of those involved gated foot controls?

A. Correct.

Q. So of the five, less than five situations, you can't testify today as to how many involved gated foot controls?

A. They could be all ungated foot switches, they could be all gated foot switches, they could be all manual foot pedals or any

combination of those three.

Q. Okay. So you have no testimony on that, no facts?

A. All I can testify is that the one that I remember was a manual foot pedal, for certain.

Q. Thank you.

Does Cincinnati, Inc., make the decision to include gated foot controls on its machines based on the size of the machine?

A. No, not that I'm aware of.

Q. Okay. What information does Cincinnati, Inc., utilize to make its -- Strike that.

What information did Cincinnati, Inc., utilize to make a decision to include gated foot controls on its press brakes?

MR. ROBINSON: Objection to the form. Excuse me.

A. That decision was made before I joined the company, and I do not know what was the basis of that decision.

Q. Are gated foot controls used on all sizes of Cincinnati, Inc.'s, gated -- Strike that.

Are gated foot controls utilized on all sizes of Cincinnati, Inc.'s, press brakes?

A. To the best of my knowledge, yes.

Q. And again, I want to be clear, you agree with the decision to include gated foot controls on press brakes?

MR. ROBINSON: I'll object to the form of the question.

A. No, I don't believe I testified to that.

Q. I thought you testified earlier that you agreed with Cincinnati, Inc.'s, decision to include gated foot controls for use with its press brakes?

A. Yes. That's a different question than you just asked.

Q. Are there different press brakes that you would not include gated foot controls with?

A. No. You asked, first, if I agreed with Cincinnati, Incorporated's decision. Then you asked if I agreed that gated foot switches should be on press brakes. And the former is true; the latter is not true.

Q. Why is there a change between your agreement with Cincinnati, Inc.'s, use of gated foot controls with its machines with the statement that you don't agree that gated foot controls should be utilized with press brakes?

A. Now as an independent consultant, I have a different perspective.

Q. And that would be since 2001?

A. Yes.

Q. Okay. And what is your perspective as an independent -- What has changed your perspective as an independent consultant?

A. The gated foot switches encourage riding of the foot switch, and I believe that, if there is an operation or a facility where that is a problem because of the gated foot switches, the gate should be removed in order to discourage the riding practice.

Q. So basically, your testimony is, if you see that the gated foot control encourages riding the pedal, then you should remove the gate?

MR. ROBINSON: I'll object to the form of the question.

A. Yes. The responsibility for that is

on the supervision and management of the manufacturing facility where the machines are being used that have gated foot switches or toe release foot switches or whatever type of foot switch. If they see the practice of riding taking place, it's their responsibility to bring it to a stop.

Q. But if they don't see the practice of riding the foot control with the gated foot -- Strike that.

If an employer does not see the practice of riding the foot control with the gated device, you would not tell them to remove the gate; would you?

MR. ROBINSON: I'll object to the form of the question.

A. If they do not see it or they do not recognize it, if it's not happening, then I would not recommend removing the gate.

Q. Thank you.

MR. ROBINSON: And I apologize, so soon into it, I need a bathroom break whenever you get a chance.

MR. HARTMAN: I could use it, too.

Let's do it now.

THE VIDEOGRAPHER: One second, please. We're off.

(Brief recess.)

THE VIDEOGRAPHER: You're back on the record.

BY MR. HARTMAN:

Q. Sir, earlier you indicated that you reviewed several, two specifically, of Professor Barnett's articles; am I correct?

A. Yes. They're Triodyne articles.

Q. Triodyne articles, but they were authored or co-authored by Professor Barnett?

A. Yes.

Q. Do you know Professor Barnett?

A. Yes, I believe I met him once.

Q. Have you ever been involved in any consultations with Professor Barnett?

A. No.

MR. ROBINSON: Any what?

MR. HARTMAN: Consultations.

MR. ROBINSON: Thank you. I thought you said confrontations.

MR. HARTMAN: No, consultations.

THE WITNESS: No.

BY MR. HARTMAN:

Q. Okay. Have you ever attended any of Professor Barnett's lectures?

A. No.

Q. Have you ever consulted with Professor Barnett on any matter of engineering?

A. No.

Q. Am I correct that your exposure to Professor Barnett has been limited to one occasion?

A. Yes, like I said, I believe I met him once.

Q. And where would that have been?

A. I really don't remember, probably at some safety function, maybe National Safety Council or some seminar maybe. I don't remember exactly.

Q. Do you have any opinion of Professor Barnett's abilities to analyze safety features on press brakes?

A. No.

Q. During your 29 years with Cincinnati, Inc., was the protection of operators

from inadvertent activation of press brakes a priority?

MR. ROBINSON: Object to the form.

A. A priority? I'm not sure I know how to answer that question. Was it important, was it reflected in the safety literature; yes.

Q. Did you consider it important in your duties with Cincinnati that operators be protected at the point of operation?

A. Yes.

Q. Did you consider it important in your 29 years with Cincinnati, did you consider it important that operators be protected from inadvertent activation of press brakes?

MR. ROBINSON: Object to the form.

A. That's -- No, that's a mischaracterization of what I would say. It's important to minimize the probability of inadvertent actuation of a foot control or a hand control or any type of control for a machine tool.

Q. Did Cincinnati spend time and effort in trying to prevent inadvertent activation of its press brakes by use of a foot control or a two-hand control?

MR. ROBINSON: Objection to the form.

A. Cincinnati made efforts to reduce that probability, yes.

Q. And would you agree, sir, that the reason you reduced that probability of inadvertent activation of press brakes, either by foot control or two-hand control, would be because -- would be so as to protect the operator in the event they're working on a press brake?

MR. ROBINSON: Objection to the form.

A. Yes, yes and no, because, you know, unintended operation of a machine is not a desirable event under any circumstance, so based on that context right there, any measures taken to reduce the possibility of an unintended cycle of a machine goes to an advancement of the overall safety of the operation.

Q. Do you know what HOOD is?

A. Is that with a period after each letter?

Q. Yes.

A. Yes.

Q. Okay. Would you tell us what is commonly referred to as HOOD?

A. It's an acronym that stands for hands out of die operation.

Q. And what does that mean?

A. That's a production philosophy relative to power press brakes, and other machine tools as well, that prescribes operation of the machine without the need for an operator's hands to enter into the hazard located at the point of operation of the machine.

Q. Am I correct that HOOD is directed to the employer as opposed to the operator?

MR. ROBINSON: Objection to the form.

A. That would be a too narrow characterization of HOOD. HOOD is directed to the operation of the machine.

Q. And who would implement the hands out of die method of operation of the machine?

A. It would be the operator who uses the machine, the set-up man who sets the tooling to the machine, the supervisor of the area where the machine is being used, production engineering,

people who determine how piece parts are made on a particular machine and determine the die configuration for that particular part, and overall management of an operation or of a company. It's a philosophy that is motivated throughout the entire organization, and it involves everybody to accomplish that.

Q. Does it involve the manufacturer of the particular press brake?

A. Very little.

Q. What involvement does HOOD have with the manufacturer of the press brake?

A. Manufacturers from their position have the opportunity to recommend it and describe it and provide information about it, but very little with respect to implementation of it.

Q. Okay. HOOD is basically geared toward the company utilizing the machine and its employees?

A. Yes.

Q. Do you agree with the statement that the operator basically operates the job of the press brake as prescribed by the operator's employer?

MR. ROBINSON: Object to the form of the question.

A. I don't -- Say that again, restate that.

Q. Would you expect in the normal course of business in the operation of a press brake that the operator perform the function as mandated by the employer?

MR. ROBINSON: Objection to the form.

A. That depends upon the particular organization. I've seen where operators have little control over what is done with a press brake, and I've seen situations where the operators have complete control over what is done on a press brake as far as their involvement in the production operation on a press brake.

Q. So in the typical course of analyzing the multiple uses of press brakes, some plant's operators will have input, others they won't?

A. In addition -- That is true with respect to input, also, with respect to making the decision.

Q. Would you expect, though, that in some situations that operators would perform the job as mandated by the employer with no input?

A. That's what I said, yes.

Q. And that's something that is known in the industry?

A. Yes.

Q. That is something that Heim would know; would you agree?

MR. ROBINSON: Objection to the form.

A. No.

MR. ROBINSON: Speculative nature.

Q. Would that -- Would the --

MR. ROBINSON: Same objection for the industry as well and the form and the breadth of that question.

Q. Was HOOD ultimately repealed from inclusion in OSHA and the ANSI standard?

MR. ROBINSON: Objection to the form.

A. Well, you have to be a little more specific than that. In the B 11.1 power press standard, mechanical power press standard, hands

out of die language was removed following the reversal of the Occupational Safety and Health Administration's decision to remove it in the middle 1970s; that's relative to power presses. Regarding power press brakes, it has always been in the standard and it remains in the standard today.

Q. But with regard to OSHA, they have revoked the HOOD requirement, correct?

A. As it applies to mechanical power presses. That's a very important distinction there.

Q. It's my understanding that OSHA does not make a difference between the mechanical power presses and press brakes; am I incorrect in that statement?

A. Yes.

Q. Okay. So OSHA still has the no hands in die requirement for press brakes?

A. No.

Q. Has OSHA ever mandated HOOD for use with press brakes?

A. No.

Q. So OSHA doesn't mandate HOOD for

press brakes?

A. OSHA mandates nothing specifically for press brakes, zero.

Q. Did OSHA ever mandate HOOD for any press that could include press brakes?

MR. ROBINSON: I'm sorry, what was the question?

Q. Did OSHA ever mandate HOOD for any press that could include press brakes?

MR. ROBINSON: Objection to the form.

A. No. I explained that the OSHA requirement for hands out of die operation was included in 1910.217, which is the mechanical power press regulation within OSHA. There is no comparable regulation within OSHA applicable to press brakes, there is none.

Q. Okay. So the mechanical power presses' standard that you're talking about that OSHA has has no application to press brakes?

A. It says it right in its scope, press brakes are excluded.

Q. Sir, this is a discovery deposition. You are an expert. I'm a lawyer trying to find

out what you know and what you do.

A. I'm sure Ralph probably told you that, though.

Q. We've talked about a lot of things.

Is HOOD feasible for use with power press brakes a hundred percent of the time?

MR. ROBINSON: Objection to the form.

A. Yes.

Q. One hundred percent of the time HOOD is feasible?

MR. ROBINSON: Objection, asked and answered.

A. Yes.

Q. Okay. Can you see situations where HOOD has been applied to the use of a power press brake but the operator still becomes injured at the point of operation?

A. Can I foresee?

Q. Yes.

A. If it's incorporated in the operation of the machine, no, there's no way that I could predict that that would happen.

Q. What happens if there's a failure in

the HOOD process, meaning let's say would one of the ways be a light current that you could achieve HOOD?

MR. ROBINSON: Objection to the form.

A. No.

Q. A light current does not -- is not a HOOD mechanism?

A. There is, there is no HOOD mechanism. HOOD is a philosophy. HOOD is a way of operating these machines that says design the dies, design the operation, design the particular part so the operator does not have to reach between the dies to load the part or to remove the part or to in any way form the part.

Q. Would you agree that there are also numerous ways that operators interact with machines where they do have their hands in the die area and it's understood by the industry that operators will have their hands in the die area?

MR. ROBINSON: Objection to the form.

A. Which industry are you talking about? Are you talking about in general; yes.

Q. Press brake industry.

A. Oh, press brake industry.

MR. ROBINSON: Same objection.

A. Yes.

Q. So the press brake industry understands that operators will work with their hands in the die area; am I correct?

MR. ROBINSON: Objection to the form.

A. I believe that's a fair evaluation, that that acknowledgment or recognition is there. It does nothing to diminish the need to continue to promote hands off die operation.

Q. And I understand that the hands out of die operation is something that the industry is promoting, but I need to know what they understand actually happens at the ground level with operators of press brakes.

Am I correct, sir, that the press brake manufacturers know that operators will work with their hands in the die area of press brakes?

MR. ROBINSON: Objection to the form.

A. Yes, I believe that's a fair

characterization.

Q. Did Cincinnati, Inc., know that operators would work with their hands in the die area of its press brakes?

A. Yes.

Q. Did Cincinnati, Inc., know that operators would work with their hands in the die areas on press brakes at times where there's no point of operation --

A. No.

Q. -- protection?

A. (Shaking head.)

Q. They did not know that that could occur?

A. Oh, I'm sure that they knew that it could occur, but they did not know that it would occur at any particular time.

Q. Well, over the course of manufacturing a thousand machines, would they have reason to know that it would occur at sometime during the life of those machines?

MR. ROBINSON: Objection to the form.

A. No, I don't think you can reasonably

say that.

Q. Well, sir, am I correct that there are injury statistics with regard to press brakes of individuals who receive amputations at the point of operation?

A. Yes.

Q. Okay. Would you agree, sir, that in order to have an injury at the point of operation with your hands that your hands would be in the die area?

A. Yes.

Q. Would you also agree, sir, that if your hands are injured in the die area at the point of operation of a press brake, that the individual or entity was not using the HOOD method of working with the machine?

MR. ROBINSON: Object to the form.

A. It may or may not have been, but yes.

Q. It could have been -- They could have been utilizing the HOOD, it might have just been defective HOOD; would you agree?

MR. ROBINSON: Objection to form.

A. Yes.

Q. Would you agree, sir, that if a person with those statistics of people that are injured at the point of operation with their hands, if it wasn't -- if they weren't utilizing a HOOD procedure, they could have been using a point of operation procedure that failed?

MR. ROBINSON: Objection to the form.

A. A point of operation procedure, I don't --

Q. System that failed.

A. I don't understand the question.

Q. Okay. Well, there are statistics published about amputations at the point of operation with regard to press brakes; am I correct?

A. Not really.

Q. You don't know of any statistics?

A. With regard to press brakes?

Q. Yes.

A. None that I've seen recently regarding press brakes.

Q. Would power press statistics be utilized to make an evaluation as to point of

operation protection on press brakes?

A. I would not think so.

Q. So your testimony today is you would utilize nothing, no analysis, that relates to punch presses in order to evaluate press brakes; am I correct?

MR. ROBINSON: Objection to the form.

A. I guess I'm not sure I'm understanding your -- Are you asking is it fair to take a power press statistic and transpose it into a press brake evaluation; then I would say no, it's not fair to do that. Is it fair to try to lump them all together; no, it's not fair to do that. You're not getting a fair or accurate, you know, representation of accidents that are happening on press brakes as opposed to power presses. And as far as I know, my answer is relative to before, I know of no data collection specifically on press brake accidents at the point of operation.

Q. Are you aware in your 29 plus years of accidents involving operators at the point of operation of press brakes?

A. Yes.

Q. Are you aware that industry-wide it's known that operators of press brakes will have injuries to their hands and fingers at the point of operation while operating press brakes?

A. Yes.

MR. ROBINSON: Objection.

Q. Would you agree, sir, that that knowledge of injuries happening to the hands of operators operating power -- press brakes would allow you to make a determination that those operators are not using point of operation safety mechanisms?

MR. ROBINSON: Objection to the form.

A. No.

Q. What does that information allow you to conclude?

A. That individuals are getting injured at the point of operation.

Q. Okay. How are they getting injured?

A. That's what the investigation is all about, to determine how the injuries are taking place.

Q. Well, have you ever investigated accidents involving point of operation -- injuries at the point of operation by press brake operators where there was no HOOD procedure in place and no point of operation protection?

A. Yes.

Q. How many times?

A. I have no recollection.

Q. Can you give me an estimate?

A. No.

Q. Can you tell me how long ago it was?

A. I believe my earliest accident investigation was in 1976, '75 maybe, yeah, that's the earliest one.

Q. So was that investigation involving an operator who injured his or her hands at the point of operation while using a press brake where there was no point of operation protection?

A. No. There was protection in place.

Q. How did the operator get injured in that situation, if there was protection in place?

A. Somebody else operated the controls, that I recall.

Q. Would you agree, sir, that operators

are known to have been injured at the point of operation while operating a press brake where there's been a HOOD procedure in place?

MR. ROBINSON: Objection to the form.

A. I can't, I cannot respond specifically yes, but over the years, I would -- I can't imagine that I have not investigated an accident where the employer had incorporated a hands out of die practice, but I can't specifically name one.

Q. Okay. Have you ever investigated an accident where the operator was injured while operating a press brake at the point of operation when the point of operation mechanism failed and that was the cause of the injury?

MR. ROBINSON: Objection to the form.

A. No.

Q. Have you ever operated point of operation failure causing injury to an operator of a press brake?

MR. ROBINSON: Objection to the form.

A. I don't understand that question.

Q. Well, have you ever investigated an accident where the point of operation system, safety system, failed, thereby, the operator was injured in the die area?

MR. ROBINSON: Objection to the form.

A. And you're saying the injury was the result or caused by the failure of the safeguarding system?

Q. Well, the safeguarding system allowed the machine to continue operating when a person was in the die area, is what I'm saying.

MR. ROBINSON: Objection to the form.

A. And the failure -- I don't understand failure.

Q. Are you aware of any situations where there's been a point of operation safety mechanism that's failed?

A. Failed, I can't say for sure one way or the other. I can't remember.

Q. Okay. Is it proper for the manufacturer of a press brake to select the foot

control to be provided as standard equipment?

MR. ROBINSON: Objection to the form.

A. I don't know what you mean by "proper." Most OEMs, if they provide a foot control, make the selection based upon what's available from the suppliers of those types of foot controls.

Q. OEM is what?

A. Original equipment manufacturer.

Q. So Cincinnati, if they're manufacturing a press brake, makes the selection of the foot control to be supplied with its press brake?

MR. ROBINSON: Objection to the form. Are you asking at all times?

MR. HARTMAN: When it's supplied as standard equipment, yes.

MR. ROBINSON: I just want to make sure I understood. That could be read a couple of different ways. Objection to the form.

BY MR. HARTMAN:

A. With regard to Cincinnati, Incorporated and it providing foot controls on its

press brakes, it has a standard foot control that is provided, unless it's otherwise specified by the purchaser of the machine, understanding that most all of the machines Cincinnati, Incorporated builds are custom-built machines.

Q. Are you aware of other manufacturers of press brakes providing a standard equipment foot controls with their press brakes?

A. I can't really answer that, how they determine what is standard equipment and how they build their machines, if they build them by spec.

Q. Do you know whether or not Heim supplied a foot control with the press brake involved in Ms. Linquist's accident?

A. To my understanding, they did.

Q. Do you know how Heim would have made the selection for what foot control they would have supplied as standard equipment?

A. No.

MR. ROBINSON: Objection to the form, assumes Heim made the selection.

Q. Okay. Is there anything that you've read or any document that you've seen that indicates that Heim did not make the selection of

the foot control that it supplied with its press brake?

MR. ROBINSON: Object to the form.

A. I've not seen any evidence either way on that.

Q. Okay. Well, did you read the manual and the parts book that came with the Heim?

A. Yes, I did, I believe.

Q. Okay. Do you recall where it said it supplied a foot control as standard equipment with the press brake?

A. Yes.

Q. Would that indicate to you that Heim supplied a foot control as standard equipment with the press brake involved in this accident?

MR. ROBINSON: Objection to the form.

A. A foot control, yes.

Q. Did you see anywhere in the materials where Heim indicated that the purchaser had the right or the opportunity to select a foot control for the press brake?

MR. ROBINSON: Objection to the form.

A. I didn't see either way, one way or the other.

Q. Didn't speak to it at all in the materials?

A. I don't remember seeing anything that spoke to it.

Q. And on the first page of your March 15th, 2006 report, you indicate that you "relied upon 30 years in the machine tool industry and referencing appropriate governmental regulations and industry standards relative to the activity taking place and equipment in use at the time"; am I correct?

A. Yes.

Q. Okay. The industry standards relative to the activity taking place, would that be the ANSI B 11.3 standard?

A. Yes.

Q. Are there any other standards that you relied upon relative to industry standards?

A. No, not that I can recall at this time.

Q. And you indicate that the government regulations, would that be the OSHA regulations in

effect at the time?

A. Yes.

Q. Am I correct that in 1978 the OSHA regulations were silent as to press brakes?

A. They were silent with respect to specific requirements for press brakes, but they were not silent relative to the machinery in general.

Q. And what standard or regulation that OSHA promulgated would you contend applied to press brakes?

A. 1910.212.

Q. And what does that regulation say?

A. "General machine requirements."

Q. And what general machine requirements did you rely upon in formulating the opinions contained in your report of March 15th, 2006?

A. That's a very short section within OSHA, and it merely states, and I'm paraphrasing, that the employer shall provide point of operation safeguarding for its machinery.

Q. Would you agree, sir, that OSHA does not mandate what manufacturers of machinery such

as press brakes are to do and incorporate on their machines for sale to the public?

A. Correct.

Q. OSHA has no -- does not govern Heim in any way with regard to the design of the press brake at issue in this matter?

A. That's correct.

Q. And OSHA would have no bearing on Heim's responsibility as to what features should be incorporated on the press brake involved in this accident?

MR. ROBINSON: Objection to the form.

A. There is no direct requirement in OSHA for that.

Q. So OSHA has no bearing on Heim's responsibilities as it relates to manufacturing press brakes with regard to the design?

MR. ROBINSON: Objection to the form.

A. The answer before stands. There is no direct requirement in OSHA that applies to the manufacture of press brakes.

Q. You also indicate on page 2 of your

report that you relied upon sales documentation; am I correct?

Do you have your report with you?

A. Yes.

Q. You might want to pull it out because we're going to be going through some things. Also in your file I noticed the large picture of a press brake; would you pull that out as well for the court reporter? Would you also pull out the picture? There's a picture of the press brake in the front of your folder that I saw. I'd like to mark your report as Coultier 1 and that photograph as Coultier 2, please.

(Plaintiff's Exhibit Nos. 1 and 2 were marked for identification.)

Q. Sir, would Coultier 1 be the -- an accurate copy of your report authored in this matter?

A. Yes.

Q. Okay. And would you tell me what is depicted in the photograph we've marked as Coultier 2?

A. I received this photograph attached to a cover letter from Mr. Robinson's paralegal

indicating that this was a photograph of a Heim machine -- of the Heim machine involved in this matter prior to it leaving the Heim -- leaving Heim and being shipped to H-B Machinery.

Q. May I see that, please.

A. (Indicating.)

Q. Do you have any way to verify the authenticity of that photograph?

MR. ROBINSON: Object to the form of the question.

A. There are two ways that I would verify the authenticity of it. One is it came from legal counsel from Heim; and, two, it looks like a photograph taken inside a facility that manufactures Heim press brakes.

Q. Does it look like the press brake involved in this accident with Ms. Lindquist?

A. Yes.

Q. Does the photograph show a foot pedal?

A. No, it does not.

Q. Does it show a two palm button switch?

A. No, it does not.

Q. You indicate in your report on page 2 that you reviewed sales documentation. What sales documentation did you review in formulating the opinions in this case?

A. There are some sales documents that were provided to me in the discovery material that I looked at.

Q. Would you --

A. I believe some communication between H&B machinery at that time, in 1978.

Q. Were you able to determine from the sales documentation or any documentation in your file as to what the uses the Heim press brake was going to be put to at the time of the original purchase?

A. No.

Q. Do you have any opinion today as to what uses the Heim press brake was going to be put to at the time of the original purchase -- sale?

A. Yes.

Q. You have an opinion today?

A. Yes.

Q. And what is that based on?

A. The reason why H&B Machinery would

be obtaining a press brake for Avco-Lycoming in Connecticut.

Q. Have you spoken to H&B Machinery?

A. No.

Q. Do you know of H&B Machinery?

A. No.

Q. Do you know of Avco-Lycoming?

A. Yes.

Q. How do you know of Avco-Lycoming?

A. I used to service them as a service representative for Cincinnati, Incorporated.

Q. Okay. Has Avco-Lycoming ever spoken to you as to why they purchased the Heim press brake?

A. No.

Q. Do you know why they purchased the Heim press brake?

A. I have an idea based upon my experience being there.

Q. Tell me what your idea is.

A. To bend sheet metal.

Q. Okay. Do you know what size of sheet metal?

A. No.

Q. Do you know how many pieces of sheet metal in a day?

A. No.

Q. Would Avco-Lycoming be putting that press brake to a general use?

A. From my experience at Avco-Lycoming, my opinion would be that they would probably be using it in a maintenance function.

MR. ROBINSON: In what, sir, I'm sorry?

THE WITNESS: A maintenance function.

BY MR. HARTMAN:

Q. And what would a maintenance function be?

A. The machine located in the maintenance department where maintenance workers would fabricate various components or pieces out of sheet metal for application and repair operations within the facility.

Q. Would you agree, sir, that they would be using it for a wide breadth of uses in the maintenance department?

A. Oh, absolutely, yes.

Q. It would not be a specialized use?

A. No, not in maintenance, no.

Q. And you're basing your testimony today based on your assumption that it would have been placed in the maintenance department, correct?

A. That assumption is based upon my experience being at the Avco-Lycoming facility in the 1970s.

Q. Did you ever see this press brake at the after co combing facility in the 1970s?

A. No. This press brake was there -- was obtained after I left that area.

Q. So you really don't know what the press brake was utilized for at Avco-Lycoming, other than you would assume it was for general purposes?

A. Yes, based upon my knowledge of how press brakes are used and my knowledge of how -- or what Avco-Lycoming did at their facility.

Q. Is there anything -- Strike that.

On page 3 of your report, down at the bottom in bold letters, you have "Heim special duty press brake"; am I correct?

A. On page 3?

Q. I'm sorry, page 2, page 2. I'm looking at the fax. Page 2, on page 2 at the bottom, it indicates that, "Heim special duty press brake"?

A. Yes.

Q. Is the use of the term "special duty" inconsistent with your statement that it was a general purpose machine?

A. Not necessarily, no.

Q. Okay. What do you mean by special duty?

A. What I mean by special duty is, based upon the B 11.3 standard and the control configuration that was originally provided with this machine, it meets the construction requirements for a special duty machine as defined in B 11.3.

Q. Would that be because of the fact it has the ability to accept either a foot control or a two palm button switch?

A. Well, that is an -- That is a result of the fact that it has an air/electric clutch control system on it.

Q. What special duty --

A. Air/electric control.

Q. So an air/electric clutch control makes it special duty?

A. Yes.

Q. There's nothing -- When you say "special duty," you're not talking about it was specially built for doing one type of duty?

A. That's correct.

Q. It's just because it has a particular type of clutch control?

A. That's correct.

Q. What would a general duty press brake have?

A. A general duty press brake has a manual foot pedal and a directly operated clutch through a mechanical linkage, which is very similar to what you would find on a manual transmission automobile clutch pedal, just works in reverse.

Q. So the difference between a general duty press brake and a special duty press brake is the type of clutch?

A. Yes, and the control system that

goes with it.

Q. And the control system on a manual -- I mean, on a general duty press brake would be the treadle that's hooked to the machine?

A. Correct.

Q. And on a special duty, it could be a two palm button switch or a foot control?

A. Or a treadle.

Q. So you could have all types of three -- all three types of operating devices on the special duty press brake, which would be the treadle, the foot control or two palm button switch?

A. Yes.

Q. And special duty has no bearing on the fact that it was specially built for a particular run of products or pieces?

A. It is not suggested to imply that.

Q. Okay. It doesn't limit the use of the press brake in any way?

A. In some ways the type of control does encumber some type of press brake operations, but if there's a manual control as well as the foot switch or the palm button control, then you

have complete versatility with the machine.

Q. Just to clarify, so basically, special duty and general duty press brakes could be used for the same breadth of types of activities?

A. It's terminology to be consistent with the requirements of the B 11.3 standard.

Q. Have you ever personally examined the two palm pedestal that was manufactured by Corry for use with the press brake?

A. No.

Q. Okay. Have you seen photographs?

A. Yes.

Q. To the best of your knowledge, was that two palm button pedestal manufactured in such a way as to operate the way you would expect a two palm pedestal control device to work?

MR. ROBINSON: I'll object to the form.

A. There's no way I can make that determination through a photograph.

Q. So you don't know if it was done correctly or not?

A. Correct.